

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**DANNY D. JOHNSON,**

**Defendant.**

**CASE NO. 8:08CR53**

## TENTATIVE FINDINGS

The Court has received the Revised Modified Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 92). Although the government did not file formal objections, it objected informally to the probation officer according tot he Addendum to the PSR. See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The parties object to the application of a 4-level upward adjustment for an aggravating role in the offense. The plea agreement reached pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) states the parties' agreement that the offense level should not be adjusted upward or downward for role in the offense. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the total offense level should be calculated as level 8.

IT IS ORDERED:

1. The Court's tentative findings are that the Defendant's objections (Filing No. 92) to the PSR are granted;
2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 28<sup>th</sup> day of January, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge